

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Compliance Assistance

4 (Amendment)

5 401 KAR 11:001. Definitions for 401 KAR Chapter 11.

6 RELATES TO: KRS 223.160-220, [KRS]224.01-010(9), 224.10-110, 224.73-110

7 STATUTORY AUTHORITY: KRS 223.160-220, [KRS] 224.10-100, 224.10-110, 224.73-

8 110

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet  
10 to promulgate administrative regulations concerning the certification of wastewater operators.

11 KRS 223.200 authorizes the cabinet to promulgate administrative regulations concerning the  
12 certification of water treatment and distribution system operators. This administrative regulation  
13 establishes definitions applicable to the certification of wastewater and water operators.

14 Section 1. Definitions.

15 (1) "Applicant" means a person who has submitted an application to take an examination for  
16 certification.

17 (2) "Board" means: ~~[the Kentucky Board of Certification of Wastewater System Operators.]~~

18 (a) The [the] Kentucky Board of Certification of Wastewater System Operators; or

19 (b) The Kentucky Board of Certification of Water Treatment and Distribution System  
20 Operators.

(3) "Cabinet" is defined by KRS 224.01-010(9).

(4) "Certificate" means a certificate of competency issued by the cabinet stating that the operator has met the requirements for the specified operator classification as established by 401 KAR Chapter 11~~[this chapter]~~.

(5) "Certified operator" means an individual that holds an active certified operator's certificate issued in accordance with 401 KAR 11:050.

(6) "Core content" means the information identified as essential by the board for purposes of certification examination and continuing education training.

(7) "Direct responsible charge" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the drinking water treatment plant or distribution system is operated in accordance with accepted practices and with KRS Chapters 223 and 224 and 401 KAR Chapters 8 and 11.

(8) "Operator" means a person involved in the operation of a wastewater treatment plant, wastewater~~[or]~~ collection system, drinking water treatment plant, or drinking water distribution system.

~~(9)~~~~(8)~~ "Primary responsibility" means personal, first-hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11. ~~[means the authority to conduct procedures and practices necessary to insure that the wastewater treatment plant or collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11.]~~

401 KAR 11:001 "Definitions for 401 KAR Chapter 11." approved for promulgation:

7/13/09

Date

Henry C.A. List

Henry "Hank" List, Deputy Secretary FOR  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 25, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Julia Kays, Regulations Coordinator  
Division of Compliance Assistance  
300 Fair Oaks Lane  
Frankfort, KY 40601  
Telephone: (502) 564-0323      Fax (502) 564-9720  
Email: [Julia.Kays@ky.gov](mailto:Julia.Kays@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 11:001

Contact Person: Aaron Keatley, Director

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:** This administrative regulation establishes the definitions applicable to the certification of operators.

**(b) The necessity of this administrative regulation:** This administrative regulation is necessary to clarify terms used in regulations related to the certification of operators.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:** This regulation conforms to KRS Chapters 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation provides clear definitions for terms applicable to water and wastewater system operators.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:001 to drinking water treatment and distribution operators.

**(b) The necessity of the amendment to this administrative regulation:**

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:001 to drinking water treatment and distribution operators.

**(c) How the amendment conforms to the content of the authorizing statutes:**

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:001 to drinking water treatment and distribution operators.

**(d) How the amendment will assist in the effective administration of the statutes:**

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:001 to drinking water treatment and distribution operators.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** Certified water and wastewater treatment, collection and distribution plant operators will be affected by this amended administrative regulation. There are approximately 4300 operators currently certified by the program. State or local governments that operate water treatment plants, water distribution systems, wastewater treatment plants or wastewater collections systems will be indirectly affected by this amended administrative regulation.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Certified operators do not

need to take any action in response to this administrative regulation.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Under this administrative regulation, individuals should not expect to experience any additional cost.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Because certified operators are affected by the definitions, they may experience benefits as a result of having a clear understanding of the terms applicable to their certification.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:** No additional costs are anticipated.

**(b) On a continuing basis:** No additional costs are anticipated.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Implementation of this administrative regulation is funded through agency receipts and federal funds.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No additional fees or funding will be required to implement this administrative regulation.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This administrative regulation will not directly or indirectly establish any fees.

**(9) TIERING: Is tiering applied? (Explain why or why not).** This administrative regulation clarifies the definitions applicable to the certification of operators. Tiering is not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 11:001

Contact Person: Aaron Keatley, Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes   X   No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation relates to state or local governments that operate water treatment plants, water distribution systems, wastewater treatment plants or wastewater collection systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS Chapters 223.160-220, 224.10-100, 224.10-110, and 224.73-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

**Note:** If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:** This administrative regulation clarifies the definitions applicable to the certification of certified operators. No fiscal impacts are anticipated.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 11:001

Contact Person: Aaron Keatley, Director

**1. Federal statute or regulation constituting the federal mandate.**

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements.

**2. State compliance standards.**

KRS 223.160-220, KRS 224.10-110

**3. Minimum or uniform standards contained in the federal mandate.**

US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

**4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**

No

**5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

Not applicable.